IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5212 of 1995

with

CIVIL APPLICATION No 6272 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAH DINESH KRUSHNALAL

Versus

GUJARAT HOUSING BOARD

Appearance:

1. Special Civil Application No. 5212 of 1995

MR YN OZA for Petitioner

MR HS MUNSHAW for Respondent No. 1

2. Civil ApplicationNo 6272 of 1997

MR YN OZA for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/06/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the Secretary of Ambica Apartments, a registered association of the occupants of Ambica Apartments constructed by the Gujarat Housing Board near Naranpura Telephone Exchange, Naranpura, Ahmedabad City had challenged the action of the Gujarat Housing Board in charging higher price from the members of the petitioner association from the original price of Rs.1,20,000/- to Rs.1,70,000/-. The petitioner had also prayed for a writ of mandamus to direct the Gujarat Housing Board to recover only Rs. 1,20,000/- as the sole price of the said apartments in Ambica Apartments and also direct to apply the conditions and terms as laid down in the pamphlet at Annexure "A" to the petition. The petitioner had also prayed for interim relief against eviction.

2. The petition was admitted on 6.11.1998, but no interim relief was granted.

3. In response to Rule issued by this Court, affidavit in reply dated 9.10.2000 has been filed by the Estate Manager-IV, Gujarat Housing Board at Ahmedabad. The stand of the Housing Board as reflected in the said affidavit, broadly stated, as under :-

3.1 The Board had put up a scheme of 528 flats for Middle Income Group (MIG) scheme on a piece of land near Naranpura Telephone Exchange, Sola, Ahmedabad and out of the said 528 flat owners, 120 flat owners have preferred a case against the Housing Board before the Consumer Forum at Ahmedabad which is pending. Hence, the petition may not be entertained.

3.2 It is further stated that the above scheme was prepared on the basis of the schedule of rates determined by the State Government in the year 1989-90 because the demand survey was made in June, 1991 by issuing an advertisement in the newspaper. It was clearly stated in the terms and conditions contained in the leaflet which was distributed to the persons who came forward to make inquiries and submit applications that Rs.1,20,000/- was only the estimated approximate price, that the price was not finalized and that the ultimate and final price would be determined by the Board which will have to be paid by

the members. Since more than adequate applications were received then the number of flats proposed to be constructed, a draw was held and thereafter tenders were invited in May, 1991 for construction of the flats under the above scheme. The lowest offer received pursuant to the tender notice was still too high since it was 72% above the tender price. Hence, the Board rejected all the offers received and reinvited tenders and finalized the same in December, 1991. Pursuant to the said exercise, the lowest tender was accepted at 40.12% above the estimated cost prepared on the basis of the schedule of rates of the year 1989-90. As per the original leaflet, the project was to commence in September, 1991 and was to be completed within 18 months i.e. in April, 1993, but the aforesaid tender exercise took longer time than expected and, therefore, the construction work commenced only in January, 1992. The construction work was completed in July, 1993 but there was delay in laying down water supply lines as the same was to be provided by the Ahmedabad Municipal Corporation. The Corporation was developing the areas of Naranpura and Sola and, therefore, a huge water sump was required to be constructed. Since the construction of the said water sump was not over, the water connection was not provided immediately upon completion of the construction work in July, 1993. Hence, the building use permission was granted by the Corporation only in April, 1994. The Housing Board being a statutory Board cannot allow possession of the flats to be handed over without getting building use permission from the Corporation. Hence, after getting building use permission in April, 1994, possession was handed over to the members in July, 1994.

3.3 Since the original estimated price of the flat was assessed at Rs.1,20,000/- on the basis of the schedule of rates in the year 1989-90 and since the construction was completed only in July, 1993, the price at which the construction work was assigned to the agency was 40.12% above the originally estimated tender cost. Even though the cost had then gone up by 40%, the price charged by the Board was only Rs.1,60,000/- as against the estimated cost of Rs.1,20,000/- meaning thereby the Board charged only 33% above the estimated cost though the tender cost was 40.12% above the estimated tender price. Moreover, the Board had borrowed the funds from HUDCO and the Board had to pay additional interest to HUDCO at the rate of Rs.10,000/per flat. Moreover, the Board also provided additional facilities like cement concrete blocks at the margin space as well as periphery of all the blocks. The Board also provided channel fencing surrounding the open buildings for the safety of

the members. The Board provided all these additional facilities without recovering additional charges from the members. The Board also provided common lights, garden etc.

3.4 It is further submitted that each of the members of the petitioner-association is given set off of interest due to delay caused in completion of the project and handing over the possession. The interest from the date of the deposit of the amount by the members till 30.6.1994 is adjusted against the instalments payable by the members. The registered sale deed documents are granted in favour of the members and thereafter the possession is handed over and the stamp duty is also paid accordingly.

3.5 It is further stated that the Board had taken the consent in writing of all the members with regard to escalation of the price by approximately 33% which was the final cost and, therefore, each of the members had entered into a contract with the Board. Hence, having entered into the contract with open eyes, no member had any right to make any grievance against price escalation which arose on account of the aforesaid circumstances.

3.6 As regards the grievance that the quality of the construction is poor, the said allegation is denied and it is further submitted that the whenever any complaints were made by the members, the same were solved. It is pointed out that the members are transferring or selling the properties at very high rates.

4. In view of the aforesaid facts on record and more particularly considering that (i) the price of Rs.1,20,000/- as mentioned in the leaflet in 1991 was only the approximate estimated price which was based on the schedule of rates in the year 1989-90, (ii) the construction of the flats was completed in July, 1993 because the Board had to go in for second round of tender process to invite more competitive offers, (iii) on account of the delay in water supply because of the construction of water sump at Sola Road, the flats could be handed over to the members only in July, 1994 and (iv) the Board agreed to pay interest to the members on the initial deposit from the date of the deposit till June, 1994 by adjusting the same against the instalments to be paid by the members, in this set of circumstances, it cannot be said that the price charged by the Board at Rs.1,60,000/- for the middle income group flat was arbitrary or unreasonable so as to amount to infringement of Article 14 of the Constitution. The Court has also

taken into consideration the principles laid down by the Apex Court in AMPUA Sangharsh Samiti vs. Rajasthan Housing Board, AIR 1998 SC 2933. and in Delhi Development Authority vs. Pushpendra Kumar Jain, 1994 Supp (3) SCC 494.

5. In view of the above discussion, the petition is dismissed. Rule is discharged with no order as to costs.

6. In Civil Application No. 6272 of 1997, the petitioners have prayed for refund of the amount of Rs.15,000/- which is alleged to have been collected by the Housing Board for construction of road lines. There is also a grievance about the quality of construction and need for repairs in the flats.

As far as these grievances are concerned, the Court does not propose to entertain the said grievances with a clarification that it will be open to the petitioner-association to raise such grievances before the Consumer Forum which has already been approached by as many as 120 flat owners of Ambica Apartments.

Subject to the aforesaid clarification, the Civil Application is disposed of.

(M.S. Shah, J.)

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